IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 122 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

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5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ARVIND MILLS LTD

Appearance:

MR BB NAIK with MANISH R BHATT for Petitioner

MR JP SHAH for MR MANISH J SHAH for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 13/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference, at the instance of the Revenue, the following question is referred to us for our opinion in respect of A.Y. 1978-79 :-

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"Whether, the assessee is entitled in law to the allowance of Excise Duty liability of Rs. 92,668/- as claimed ?"

2. In the course of assessment proceedings for A.Y. 1978-79, the assessee-Company, following the mercantile system of accounting, claimed deduction on account of excise duty amount to the tune of Rs. 92,668/- for the p[eriod from 1.3.1974 to 6.5.1977. The I.T.O. rejected the claim on the ground that the claim was based on a mere show-cause notice dated 28.5.1977 issued by the Excise Department and, therefore, liability neither accrued nor arose in the accounting year in question i.e. Calendar Year 1977. In appeal, the assessee contended that excise duty was chargeable on manufacture of goods and, therefore, even issuance of show-cause notice was sufficient to enable the assessee to claim deduction if the duty pertained to the period which was a part of the accounting year. The C.I.T.(Apeals), however, dismissed the appeal and confirmed the order of the Assessing Officer. The Tribunal allowed the claim of the assessee on account of deduction of the excise duty amount on the basis of its decision dated 29.3.1982 in the case of Ashok Mills Ltd. in I.T.A. No. 1493/Ahd/1981. Hence, at the instance of the Revenue, the present Reference is made.

3. At the hearing of the Reference, Mr.B.B.Naik, learned counsel for the Revenue relied on the decisions of the Bombay High Court in (1) STANDARD MILLS CO.LTD. v. COMMISSIONER OF INCOME-TAX, (1998) 229 ITR 366 and (2) COMMISSIONER OF INCOME-TAX v. INDIAN SMELTING AND REFINING CO.LTD. (1998) 230 ITR 194 taking the view that mere issuance of show-cause notice by the Excise Department does not result into accrual of liability for the assessee to pay excise duty and that it is only upon adjudication that liability crystallizes. Hence, deduction on account of excise duty liability can be claimed only in the year in which adjudication order is made and not in the year in which a mere show-cause notice is issued.

4. On the other hand, Mr. J.P.Shah, learned counsel for the assessee, has relied upon the decision of the Calcutta High Court delivered by His Lordship Mr.Justice Sabyasachi Mukharji (as His Lordship then was) in the

case of COMMISSIONER OF INCOME-TAX, CENTRAL, CIRCLE I, CALCUTTA v. CENTURY ENKA LTD. (1981) 130 ITR 267, and has submitted that the taxable event under the Excise Duty & Salt Act, 1944 is manufacture of goods and, therefore, the assessee was not required to wait for adjudication on the show-cause notice. Mr. Shah has further relied on the decision of the Kerala High Court in the case of EDDY CURRENT CONTROLS (INDIA) LTD. v. COMMISSIONER OF INCOME-TAX, (1992) 198 ITR 491.

In the alternative, Mr. Shah submitted that in any view of the matter, the question is academic, because, the show-cause notice dated 28.5.1977 (on the basis of which the assessee had claimed deduction for A.Y. 1978-79) came to be adjudicated in the second half of 1981 i.e. in the accounting year (calendar year) 1981. Hence in any case, the assessee would have been entitled to claim the said deduction for A.Y. 1982-83. In response to a query from the Court, Mr.Shah pointed out that the tax rates for the Assessment Years 1978-79 and 1982-83 were the same and that the assessee-Company did have adequate profits in the accounting year 1981, the exact amount being .Rs.147.83 lacs. It was, therefore, submitted that when even the case of the Revenue is that deduction in respect of excise duty liability could be claimed in the year in which the adjudication order was passed and that since adjudication order (order in Original No.193/81) was passed in the accounting year 1981, the assessee would have been entitled to claim deduction for A.Y. 1982-83 in which the assessee had adequate income. The learned counsel, therefore, submitted that the issue sought to be raised by the Revenue is academic and is not required to be answered. In support of the said contention, the learned coAunsel heavily relied on the decision of this Court in COMMISSIONER OF INCOME-TAX v. ROHIT MILLS LTD., (1996) 219 ITR 228.

5. Having heard the learned counsel for the parties and having regard to the fact that the controversy raised by the Revenue is relevant only for the period upto 31.3.1984 in view of insertion of section 43-B by Finance Act, 1983 w.e.f. 1.4.1984 providing that a tax deduction shall be allowed only in respect of the previous year in which such tax is actually paid by the assessee ([irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) and further having regard to the fact that even as per the contention of the Revenue the assessee could have claimed the deduction of excise duty amount of Rs. 92,668/- for the year in which adjudication order was

made by the Excise Authority and the fact that the order in original (No.193/81) was passed by the Authorities in 1981 (a copy of order is already on record of the Reference) and further having regard to the fact that in the accounting year 1981 the assessee did have profits to the tune of Rs. 147 lacs and that the applicable tax rate in the two relevant years was same and looking to the amount of tax involved, we are inclined to follow the principle laid down by this Court in COMMISSIONER OF INCOME TAX v. ROHIT MILLS LTD. (supra) that where the dispute is not about the liability of the claim in question as deduction from income, but the dispute is only about the year in which the deduction should be allowed, if the assessee had sufficient income for the year in which the claim is to be allowed even according to the Revenue, the question of law which arises in such cases should be treated as having mere academic value which need not be answered.

6. In view of the above discussion, we decline to answer the question referred to us.

7. The Reference accordingly stands disposed of with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)